

WILLIAM L. RUCINSKI

IBLA 79-339

Decided August 1, 1979

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring placer mining claim void for failure to file evidence of annual assessment work or notice of intention to hold the mining claim.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Abandonment

The owner of an unpatented mining claim relocated before Oct. 21, 1976, has until Oct. 21, 1979, in which to record his notice of location with BLM. However, if he elects to record in 1977, he must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following year, 1978, and each year thereafter, or the claim will be conclusively deemed to have been abandoned.

APPEARANCES: William L. Rucinski, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 11, 1977, William L. Rucinski filed a notice of location of the Island Camp placer mining claim with the Oregon State Office, Bureau of Land Management (BLM), which indicated that the claim had been relocated on June 12, 1975. On April 6, 1979, BLM issued a decision declaring this claim void per 43 CFR 3833.2-1 and 3833.4, due to Rucinski's failure prior to December 31, 1978, to file either evidence of annual assessment work performed in 1978 or a notice of his intention to hold this claim. Ruckinski (appellant) filed a timely notice of appeal of this decision. We affirm.

[1] Section 312 of the Federal Land Policy and Management Act of 1978 (FLPMA), 43 U.S.C. § 1744 (1976), establishes mandatory procedures for the recordation of information concerning mining claims located on the Federal lands. This procedure entails two distinct steps which must be undertaken in order to preserve the validity of unpatented mining claims such as appellant's which were located or relocated prior to October 21, 1976, the effective date of FLPMA.

First, an owner of such a claim must file a copy of his official record of the notice of location or certificate of location of the claim, along with a description of the location of the claim with the BLM State Office having jurisdiction over the area in which the claim is situated. 43 U.S.C. § 314(b) (1976); 43 CFR 3833.1-2. For claims located or relocated on or before October 21, 1976, this notice of location must be filed on or before October 21, 1979. *Ibid.*

Second, after having taken this first step by giving BLM notice of the existence of his claim, the owner of an unpatented mining claim is required to file annually either a notice of intention to hold the claim or an affidavit of assessment work performed thereon, beginning in the calendar year following the year in which he records his claim with BLM. 43 U.S.C. § 314(a) (1976); 43 CFR 3833.2-1. ^{1/}

There is no doubt that appellant complied with the first requirement that he notify BLM of the existence of his claim on or before October 21, 1979, as the record shows clearly that he did so on October 11, 1977. However, appellant failed to meet the second requirement that he thereafter begin to file annually either evidence of annual assessment work or a notice of his intention to hold the claim. This claim was recorded in calendar year 1977. It is true that appellant could have delayed the recordation of the notice of location until October 21, 1979, in which case he would not have been required to file evidence of annual assessment work until the following calendar year. However, having elected to record the claim in 1977, appellant was obliged to file one or the other of the subsequent documents prior to December 31 of 1978, the year following the calendar year in which he recorded the claim in the BLM office, as required by 43 CFR 3833.1-2.

Appellant does not deny that he failed to submit the required information, having apparently believed mistakenly that he had fully

^{1/} The controlling section is 43 CFR 3833.2-1(a)(1), which provides as follows: "The owner of an unpatented mining claim located on Federal land . . . on or before October 21, 1976, shall file . . . prior to December 31 of each calendar year following the calendar year of recording in the proper BLM office pursuant to this subpart [i.e., pursuant to 3833.1-2] evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim." (Emphasis supplied.)

complied with FLPMA by taking the first step described above. Neither FLPMA nor the regulations provide for any leeway in the application of the penalty for failure to file this information each year after recordation, which penalty requires that the claim shall be deemed to be void. 43 CFR 3833.4(a). ^{2/} See Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978), aff'd Northwest Citizens for Wilderness Mining Co. v. Bureau of Land Management, Civ. No. 78-46-M (D. Mont. June 19, 1979); Blackburn Enterprises, 41 IBLA 115 (1979); Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Carruthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Donald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

^{2/} This section provides as follows: "The failure to file such instruments as are required by §§ 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim . . . and it shall be void."

